

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION No 3768 of 1990

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

-
1. Whether Reporters of Local Papers may be allowed to see the Judgment ?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the Judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

THE GITAR LABORATORIES
VERSUS
THE AHMEDABAD ELECTRICITY CO. LTD.

Appearance:

MR KH KAZI for Petitioner
MR KB PUJARA for Respondent

CORAM : MR JUSTICE S.K. KESHOTE
Date of Decision : 20/01/2001

C.A.V. JUDGMENT

1. The Gitar Laboratories, a partnership firm registered under the Indian Partnership Act, 1932, at Ahmedabad, by this petition challenges two bills dated

12-8-1989 (demand notices) raised by the respondent for Rs.67,827-60 and Rs.1,03,751-36 in aggregate Rs.1,71,578-96 against the petitioner. This claim has been raised by the respondent-company for electricity charges against the petitioner during which period the meter installed at the petitioner -establishment recording the electricity consumption remain dead i.e. it did not record any consumption at all during that period.

2. Learned counsel for the respondent fairly submitted that it is not a case of malpractice or divergence of energy or theft of electricity or interference with the meter. It is a plain and simple case where the meter stopped reading consumption and this demand has been raised. Learned counsel for the respondent further submits that the respondent acted very fairly and whatever relaxation could have been given from the demand raised, it has been given to the petitioner and then this final demand has been raised. The respondent filed detailed reply to the special civil application and in which a preliminary objection has been raised re. maintainability of the petition on the ground that the respondent-company is a company registered under the Provisions of Companies Act in a private sector and it is not State or Agency of State or instrumentality of State within the meaning of Article 12 of Constitution of India and it is not amenable to the writ jurisdiction of this Court under Article 226 of the Constitution.

3. I do not find on the record of this special civil application any rejoinder to reply has been filed. It is also not the case of the learned counsel for the petitioner that rejoinder to reply has been filed by the petitioner. So the petitioner has not controverted the ground raised by the respondent in reply that the respondent-Company is not a State or instrumentality of State or agency of State and it is not amenable to writ jurisdiction of this Court. The petitioner has not by filing rejoinder to reply shown how this Company is a State or agency of State or instrumentality of State within the meaning of Article 12 of the Constitution and this petition is maintainable. If we go by the petition, I do not find anything therein even where the petitioner whisper that the respondent-company is a State within the meaning of Article 12 of the Constitution and this petition is maintainable before this Court under Article 226 of the Constitution.

4. Learned counsel for the petitioner raised first

contention that it is a case which falls under section 26(6) of the Indian Electricity Act and only remedy available to the respondent is to make reference to the Electrical Inspector and to abide by the decision given by him. Another contention has been raised that as per the provisions of section 26 of the Act aforesaid for this stopping of meter, recovery of dues could have been possible only for period not exceeding six months. In support of his contention, learned counsel for the petitioner placed reliance on the following decisions:

AIR 1988 SC 71. M.P. Electricity Board & Ors.
vs. Smt. Basantibai

AIR 1987 DELHI 219 H.D. Shourie vs. Delhi Mun.
Corporation

AIR 1985 MP 70 Smt. Basantibai vs. M.P.
Electricity Board & Ors.

AIR 1989 KARNATAKA 279 Topasa Ramasa Patil vs.
Karnataka Electricity Board

AIR 1991 KARNATAKA 345 M/s. Sri Krishnarajendra Mills
Ltd. vs. Chairman, K.E.B.,
Bangalore.

5. In contra, learned counsel for the respondent-company on merits submitted that the petitioner is bound by condition of Supply and Miscellaneous Charges of the Ahmedabad Electricity Company Ltd. and this case clearly falls under clause (b) of Condition No.14 thereof. The demand raised for the period during which the meter of the petitioner was out of order or ceased to register the consumption of energy is perfectly legal and justified to which no interference of this Court is called for.

6. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

7. The respondent is a Company registered under the Companies Act and the petitioner has failed to show how it can be taken to be State or agency of State or instrumentality of State within the meaning of Article 12 of the Constitution of India. This objection is specifically raised by the respondent in reply to the special civil application and the same has not been controverted. The petitioner has not stated or claimed the respondent to be a State or agency of State or instrumentality of State within the meaning of Article 12 of the Constitution and as such it cannot be taken to

be a State amenable to the writ jurisdiction of this court and this petition deserves to be dismissed only on this ground.

8. Otherwise also, on merits, I do not find any case in favour of the petitioner. It is not a case of theft of electricity or malpractice or divergence of energy or interference with the meter. The petitioner is bound by the Conditions of Supply & Miscellaneous Charges as prescribed by the respondent-company. This is a contract in between the parties, a binding contract, and petitioner is bound by it. The petitioner has not challenged clause (b) of Condition NO.14 of the Conditions of Supply & Miscellaneous Charges of the Company. This condition reads as under:

(b) In the event of any meter being out of order or ceasing to register the consumption of energy, the registration during the period in which such cessation is observed to have taken place shall normally be assessed according to the average registration during the preceding period not exceeding three months or two billing periods, whichever is longer, consideration being given to conditions of occupancy during the periods in question. Should sufficient data be not available for determining such average, the assessment shall be based on the average consumption during the succeeding period of three months or two billing periods, whichever is longer.

9. From clause (b) of the Conditions, it is clear that in the event of any meter being out of order or ceasing to register the consumption of energy, the registration during the period in which such cessation is observed to have taken place shall normally be assessed according to the average registration during the preceding period not exceeding three months or two billing periods whichever is longer, consideration being given to conditions of occupancy during the periods in question. It is further provided that where sufficient data be not available for determining such average, the assessment shall be based on the average consumption during the succeeding period of three months or two billing periods, whichever is longer.

10. Learned counsel for the petitioner has not disputed that the electricity was consumed during this period by the petitioner. His contention is that it is a case of fault in the meter and even if it is held to

be a faulty meter, demand cannot be raised for a period exceeding six months. Learned counsel for the petitioner also does not dispute that during this period in dispute the meters stopped to record consumption of electricity charges. If we go by the Conditions of Supply & Miscellaneous Charges, which is binding upon the petitioner, it is a case where the meter stopped giving reading of consumption of electricity and in such case, the Company as per the terms of Conditions and Supply of Miscellaneous Charges is entitled to determine, demand and recover the costs of electricity consumed during this period. Otherwise also, it is most unfair and in fact a dishonest approach of the petitioner to file this petition challenging the demand raised by the respondent for electricity consumed by the petitioner during the period the meter stopped to give reading. It is to be stated at the cost of repetition that it is not the case of the petitioner that during this period it has not consumed any electricity. It is understandable that there may be a dispute regarding quantum of electricity consumed and costs thereof but this dispute raised that the Company cannot demand from the petitioner though it has consumed electricity during this period is wholly unjustified and a dishonest approach. The petitioner being a consumer of the electricity, consumed the electricity for this period undisputedly and as a result of which it is liable to pay demanded amount. The quantum of amount, as stated earlier, is not in dispute and this plea raised for denying this claim of the respondent is not available to the petitioner. This case is covered under the Conditions of supply of electricity which is binding upon the petitioner and rightly this demand has been raised by the respondent. It is a contractual obligation of the petitioner which has to be discharged by it voluntarily rather than to file this petition.

11. The cases on which reliance has been placed by the learned counsel for the petitioner are of little help to him and are not applicable in the facts of this case. Each case has to be decided on its own facts.

12. Subsection (6) of section 26 of the Indian Electricity Act provides that where any difference or dispute arises as to whether any meter referred to in subsection (1) is or is not correct, the matter shall be decided, upon the application of either party, by an Electrical Inspector; and where the meter has, in the opinion of such Inspector ceased to be correct, such Inspector shall estimate the amount of the energy supplied to the consumer or the electrical quantity

contained in the supply, during such time, not exceeding six months, as the meter shall not, in the opinion of such Inspector, have been correct; but save as aforesaid, the register of the meter shall, in the absence of fraud, be conclusive proof of such amount or quantity.

13. The attempt made by the learned counsel for the petitioner to put in service the provisions of subsection (6) of section 26 of the Act aforesaid is wholly misplaced in view of the contractual obligation which the petitioner agreed upon and as contained in Conditions of Supply & Miscellaneous Charges. Subsection (6) of Section 26 of the Act aforesaid is not attracted in the present case. It is not the case of defective meter or the meter recording incorrect reading of consumption of electricity. It is also not the case of slow or fast running of the meter. The Company was not under any obligation, in the facts of this case, to make reference of the meter to the Electrical Inspector. Those are the cases of the category where meter runs slow or fast or there is some defect in the meter but not the case where meter totally stopped to read or give any reading. The petitioner has also not considered it to be a case of defect in the meter or that the meter is giving slow or fast reading. Subsection (6) of section 26 of the Act aforesaid in unambiguous terms provide right to either party to apply to the Electrical Inspector in the case which falls under that provision. If the petitioner considers it to be a case of subsection (6) of section 26 of the Act aforesaid, it could have approached to the Electrical Inspector. The very fact that the petitioner has not approached to the Electrical Inspector by making reference, a presumption has to be drawn that it also considered it to be a case which does not fall under that provision. It is totally a dishonest approach of the petitioner to raise such a contention when the demand has been made for electricity consumed by it during the period the meter stopped to work. When the meter stopped then it was also the duty of the petitioner to bring this fact to the notice of the company. That has also not been done. The petitioner should have exhibited itself to be an honest consumer and all these facts should have been brought to the notice of the company. The petitioner enjoyed the electricity for a long period during which the meter stopped. It is difficult to accept nor it is the contention of the learned counsel for the petitioner that the petitioner was not knowing about the fact that the meter stopped functioning.

14. In the result, this special civil application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this Court stands vacated. The petitioner is directed to pay Rs.2000/- as costs of this petition to the respondent.

zgs/-